IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/12/2010

CORAM

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HON'BLE MR.JUSTICE S.R.SINGHARAVELU

T.C.No.379 of 2000
and T.C.Nos. 380 and 381 of 2000

The Commissioner of Income-tax,
Tamilnadu-IV,
Chennai-34. ..Applicant

-Vs-

M/s Soft Beverages (P) Ltd.,
Vilangudi,
Visalakshi Nagar,
Madurai. ..Respondents

Tax Case reference under Sec.256 (2) of the Income-tax Act, 1961,
against the order of the Income-tax Appellate Tribunal, 'A' Bench, Madras,
dated 7.1.1997, made in R.A.No.262 to 264/Mds/97 in ITA No.2510 to
2512/Mds/89.

!For Applicant : Mr.J.Narayanasamy,
Jr. Standing Counsel
for I.T. Department.

^For respondent : Mr.S.Balachandran

:JUDGMENT

(Delivered by R.JAYASIMHA BABU, J.)
Investment allowance for the assessment year 1983-84 was denied to the assessee, a manufacturer of aerated waters under the brand name of 'TORINO', such manufacturing activity having been carried on under a licence, on the ground that the aerated waters manufactured by it contained blended flavouring concentrates. The assessee having appealed to the Commissioner against that view of the assessing officer, the Commissioner accepted the assessee's case that the original entry without the explanation, did not take in it's fold synthetic essences which are admittedly used by the assessee and that the explanation that was added subsequently did not have retrospective effect. That view of the Commissioner has been affirmed by the Tribunal.

2. It is not in dispute that synthetic essences are used by the

assessee for the purpose of flavouring the aerated waters. The essence is in the form of concentrate and is clearly a flavouring concentrate. It is synthetic essence. The very term 'synthetic' denotes a thing which is not natural. In the making of the synthetic essence more than one ingredient is employed. The interaction of two or more ingredients is capable of being broadly viewed as blending. Synthetic essences, therefore, are clearly blended flavouring concentrates.

3. Learned counsel for the assessee, however, submitted that a learned single Judge of this Court has, in a case concerning the same assessee, held that synthetic essence is not a blended flavouring concentrate. Our attention was invited to the case of Soft Beverages Pvt. Ltd., Madurai v. Union of India [1982 E.L.T., 119 (Mad.)]. We find from that judgment that the learned single Judge had not examined the question as to whether synthetic essence is a blended flavouring concentrate. It has been stated in that judgment that there was no dispute that the assessee was not using blended flavouring concentrate. That was a case which arose under the Central Excise Act and any concession made therein by the Excise authorities would not bind the Revenue here. That judgment, in our view, does not lay down the law correctly. 'Blended flavouring concentrates' would take within their fold synthetic essences which are concentrates used for providing flavour and which concentrates are blended.

4. The eleventh schedule to the Income-tax Act contains a list of articles and things for the manufacture or production of which machinery is installed which would not be eligible for grant of investment allowance. Item No.5 in that eleventh schedule reads thus:-

"Aerated waters in the manufacture of which blended flavouring concentrates in any form are used."

An Explanation was added thereunder by the Finance Act 1987 which came into force from 1.4.1988, which explanation reads thus:--

"Explanation.-- Blended flavouring concentrates shall include and shall be deemed always to have included, synthetic essences in any form."

5. The amendment that was effected in the year 1988 for the purpose of introducing an explanation under Entry No.5, was introduced, as set out in the memorandum explaining the provisions of the Finance Bill 1987, thus:-

"It has been found that certain taxpayers manufacturing aerated waters in which synthetic essence is being used, are claiming the above benefits on the ground that the synthetic essence cannot be included in the expression "blended flavouring concentrates in any form".

As this was never the legislative intent, with a view to counteracting the tax avoidance and placing the matter beyond doubt, the proposed amendment seeks to provide that the blended flavouring concentrate appearing in item 5 would include synthetic essence in any form."

6. Learned counsel for the assessee emphasised the fact that this amendment took effect from 1st April, 1988, and submitted that for the purpose of understanding the scope of the original entry the explanation cannot be taken into account.

7. The amendment, despite a particular date having been fixed as the date from which it will take effect, even when it is not made retrospective, if found to be clarificatory in the sense that even without the aid of that amendment the un-amended provision was capable of comprehending what was sought to be made clear by the amendment, the amendment made subsequently does not have the effect of restricting the meaning of the original entry and the width of the entry remains the same. The facet of it's content which had either been misconstrued or had not been recognised is only brought out when the clarificatory amendment is effected.

8. The fact that this amendment was made effective from 1st April, 1 988, therefore, does not in any way have the effect of denuding the original entry of a part of it's content. The synthetic essence being but one form of a blended flavouring concentrate was a blended flavouring concentrate before the amendment as also after the amendment. The order of the Tribunal holding that the assessee, despite being engaged in the manufacture of a product which is covered by Entry 5 of the eleventh schedule, is entitled to investment allowance, therefore, cannot be sustained. The same is set aside and the appeal is allowed.

Index: Yes
Website: Yes

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan,
III Floor, Besant Nagar,
Madras-90. (with records) (5 copies)

2.The Secretary,
Central Board of Revenue,
New Delhi. (3 copies)

3.The Commissioner of Income Tax,
Tamil Nadu-IV, Chennai-34.

4.The Deputy Commissioner of Income-tax,
(Appeals)-II,
Madurai Range,
Madurai.

5.The Income-tax Officer,
Company Circle,

Madurai-2.

6.The Deputy Commissioner of Income-tax,
Special Range-II, Madurai.

7.The Commissioner of Income-tax,
Madurai.

Dev/